

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 4, 2002

GSBCA 15683-RELO

In the Matter of DENNIS FIJALKOWSKI

Dennis Fijalkowski, Yuma, AZ, Claimant.

David M. England, Office of General Counsel, Defense Commissary Agency, Fort Lee, VA, appearing for Department of Defense.

BORWICK, Board Judge.

In this matter, claimant, Dennis Fijalkowski, seeks from the Defense Commissary Agency reimbursement of real estate transaction expenses related to his transfer from Lakenheath, England, to Yuma, Arizona. The agency denied reimbursement because it had determined that claimant did not meet the eligibility requirements of statute and the implementing Federal Travel Regulation (FTR) and the Department of Defense Joint Travel Regulations (JTR) for reimbursement. We conclude that the agency correctly applied statute and regulation in denying reimbursement.

The facts as indicated by the record are as follows: Claimant retired from active duty with the United States Air Force on June 30, 1993, at Lakenheath, England. Until October 29, 1995, he worked part time at various jobs for the Defense Commissary Agency at Lakenheath. On October 29, 1995, the agency appointed claimant to the permanent position of store worker at Lakenheath.

Effective January 28, 2001, the agency reassigned claimant to the agency's commissary at Yuma Proving Grounds, Arizona. Claimant's travel authorization originally authorized reimbursement of real estate expenses, but the agency later issued a corrected authorization deleting that entitlement.

Claimant transferred to Yuma, Arizona, purchased a house there, and incurred \$4145.15 in real estate expenses. On June 8, 2001, claimant submitted a voucher for reimbursement of those expenses. The agency disallowed the requested reimbursement because he was hired in a foreign area, rather than transferred to the foreign permanent duty station (PDS) from a domestic PDS. Claimant appealed the disallowance to this Board.

Statute provides that:

(2) Under regulations prescribed [by the Administrator of General Services], an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty) -

(A) expenses required to be paid by the employee of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States; and

(B) expenses required to be paid by the employee of the purchase of a residence at the new official station within the United States.

(3) Reimbursement of expenses under paragraph (2) of this subsection shall not be allowed for any sale (or settlement of an unexpired lease) or purchase transaction that occurs prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the post of duty outside the United States.

5 U.S.C. § 5724a(d)(2),(3) (2000). The implementing FTR provides that the real estate reimbursement allowance applies to employees:

who have completed an agreed upon tour of duty in a foreign area and instead of being returned to the former nonforeign area official station, are reassigned or transferred in the interest of the Government to a different nonforeign area official station than the official station from which the employee was transferred when assigned to the foreign post of duty.

41 CFR 302-6.1(g)(2). In other words, an employee who is stationed in a foreign area must have been transferred overseas from a station in the United States to be entitled to real estate expenses arising from a subsequent transfer to a different station in the United States. The JTR is in substance the same. JTR C14000-C.2 note. Here, claimant was hired by the agency at Lakenheath after his retirement from active duty with the United States Air Force. Claimant was not transferred by the agency to Lakenheath from a station in the United States; claimant was a local hire. Consequently, claimant is not entitled to reimbursement of real estate transaction expenses upon his transfer from Lakenheath to Yuma, Arizona. George S. Page, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707.

The agency correctly applied statute and regulation in denying the claim.

ANTHONY S. BORWICK
Board Judge